

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SENATOR BILL DeSTEPH,)	
)	
)	
Plaintiff,)	Civil Action No. 3:20-cv-951 (DJN)
)	
v.)	
)	
SENATOR MAMIE LOCKE, <i>et al.</i> ,)	
)	
)	
Defendants.)	

AMENDED JOINT STIPULATION OF FACTS

1. Plaintiff is a resident of the Commonwealth of Virginia residing in Virginia Beach, Virginia and is the duly elected Senator of the 8th Senatorial District in Virginia. The Plaintiff is moving for relief in his individual and official elected capacity.
2. Senator Mamie Locke is a duly elected Virginia State Senator and Chair of the Virginia Senate Rules Committee.
3. Speaker Eileen Filler-Corn is a duly elected Virginia Delegate and is currently the Speaker of the House of Delegates.
4. Susan Clarke Schaar is the Clerk of the Senate of Virginia.
5. Suzette Denslow is the Clerk of the Virginia House of Delegates.
6. The Virginia Division of Capitol Police is a legislative agency responsible for general law enforcement for the State Capitol Complex and properties assigned to the agency in Richmond, Virginia, protective services for the Governor and first family, and special-event assignments and security details throughout the Commonwealth.
7. There are 100 elected Delegates in the General Assembly.
8. There are 40 elected Senators in the General Assembly.
9. The Virginia General Assembly is a part-time legislative body. Each year, the body meets for either a long year or a short year, comprised of 60 days or 30 to 45 days. In addition to the regular sessions, special sessions may also occur as deemed necessary by the Governor.

10. Most Delegates and Senators have an office in his or her district. Each Delegate and Senator is provided an office in the General Assembly building in Richmond, Virginia. Currently, the operations of the General Assembly are located in the Pocahontas Building in Richmond, Virginia, while the permanent General Assembly building is undergoing renovations. Virginia legislators are provided office space within the Pocahontas Building to use when they are in Richmond. These legislators are provided an allowance for office expenses and supplies in the amount of \$1,250 for each month of each calendar year.
11. On December 2, 2020, Senate Clerk Susan Schaar advised legislators, including Plaintiff, that “due to the rise in Covid-19 numbers” the Pocahontas Building would only be open for credentialed legislative employees and current legislators during the upcoming Regular Session of the General Assembly. See attached email labeled “Exhibit A.” This information reflected a continuation of the closure of the Pocahontas Building to the public which began on March 16, 2020 due to public health guidance related to Covid-19.
12. The east wing of the Pocahontas Building was built in the early 1960s, with construction completed in 1962. The west wing of the Building was built in 1923.
13. Some of the hallways of the Pocahontas Building are only 4 feet wide.
14. The distance between some administrative assistants’ desks and the chairs located in hallways for waiting members of the public is no more than 6 feet in some places.
15. Although the Capitol Police patrol the Pocahontas Building, there is no personnel in the Pocahontas Building who monitor the activities of each individual once inside the building or escort visitors to or from meetings.
16. The east wing of the Pocahontas Building contains, among other rooms, the office space provided for the duly elected members of the House of Delegates and Senate. The west wing of the Pocahontas Building contains, among other rooms, the Senate Finance and Appropriations Committee, Senate Committee Operations, House Committee Operations, and the Senate Briefing Room. The Pocahontas Building is located directly across the street from the Capitol grounds.
17. In addition to the office space provided for members of the General Assembly to use when in Richmond, the Pocahontas Building houses the Division of Legislative Automated Services (“DLAS”), the Division of Legislative Services, Support Services for both the House of Delegates and the Senate, the House Committee Operations, Senate Committee Operations, Capitol Police, and Virginia Commonwealth University’s Computer Center, which provides full database administration and storage, as well as operations and systems support to the University community.
18. The Pocahontas Building has a maximum aggregate capacity of 5,697 individuals, split between two conjoined buildings. The Capitol Building has a maximum capacity of 1,958.

19. The east wing of the Pocahontas Building has an aggregate total of 131,584 square feet of assignable space. The west wing of the Pocahontas Building has an aggregate total of 107,840 square feet of assignable space.
20. The Pocahontas Building has multiple entrances and exits, including a wheelchair-accessible entry and exit point.
21. In normal (non-pandemic) times, when visitors are allowed into the Pocahontas Building, every member of the public, as well as all legislative staff, are required to go through a metal detector before being granted entry to the Building.
22. The east wing of the Pocahontas Building is comprised of six above-ground floors containing, among other rooms, the offices provided for most delegates and senators, as well as some legislative staff offices. The west wing is fourteen stories and contains certain committee staff and other career civil servants. There are committee and conference rooms within the Building, as well as briefing and/or press conference rooms and several lobbies.
23. The Pocahontas Building has been used, in part, as temporary space for the General Assembly since January 2018 and continues to be used for such purposes while a new General Assembly Building is being constructed.
24. Large groups have been known to rally outside the Pocahontas Building during the regular session and then meet with or lobby their representatives to discuss issues important to the group.
25. The General Assembly's offices have historically been accessible to members of the public for meetings with legislators. This has been true for the legislators' temporary offices within the Pocahontas Building since the January 2018 General Assembly session, until the Building was closed to the public in March of 2020 due to the Covid-19 pandemic.
26. The Infrastructure Services of the Division of Legislative Automated Services ("DLAS"), comprised of three employees, maintains the Legislature's physical servers which support the legislative agency websites, audio and video feeds, programming, and systems processing required for the legislative session.
27. On March 12, 2020 Governor Northam declared a state of emergency in the Commonwealth due to Covid-19. On March 13, the President of the United States declared that the Covid-19 outbreak in the United States constituted a national emergency. On May 26, Governor Northam declared that a state of emergency continues to exist in the Commonwealth with respect to Covid-19.
28. The virus that causes Covid-19 is extremely contagious and potentially fatal. It spreads through close person-to-person contact or by contact with the respiratory droplets produced when an infected person coughs, sneezes or talks. People who do not have symptoms or know they are infected can still spread Covid-19.

29. Anyone can contract Covid-19, regardless of age, health, or any other factor. Although many people with Covid-19 experience mild or moderate symptoms, others, particularly older patients and those with compromised immune systems or underlying health conditions such as diabetes, heart disease, and chronic lung conditions, experience much more severe outcomes, including death. Such patients often require hospitalization, intensive care, and invasive ventilation.
30. In Virginia, as of December 22, 2020, there have been more than 314,000 cases of Covid-19 across the Commonwealth, and there have been nearly 5,000 cases of Covid-19 in Richmond City alone.
31. Also as of December 22, 2020, there have been over 4,700 deaths in Virginia, including 88 in Richmond.
32. The guidance and directives issued by Virginia's Health Commissioner and the Virginia Department of Health have been consistent with federal guidance to maintain person-to-person distances of at least six feet, wear a face covering around others, and frequently wash hands and clean surfaces. The guidance and directives are also consistent with restrictions put in place in states and localities across the country.
33. Because Covid-19 spreads from person to person through close contact, maintaining distance between people, particularly indoors, is critical for reducing the overall number of positive cases, in turn reducing the number of hospitalizations that become necessary and the number of intensive-care beds and ventilators required to treat patients.
34. Indoor areas pose greater risk of transmission of Covid-19 than outdoor areas because of the way the virus spreads through respiratory droplets from an infected person.
35. Wearing a face covering, while important to slowing the spread of the virus, is not a substitute for social distancing. Face coverings alone, without other mitigation measures, are not sufficient to stop the spread of the virus.
36. As of December 25, 2020, over half of Virginias health districts were in growth trajectories for Covid-19. Public health data make clear that Covid-19 continues to surge nationally and in Virginia.
37. In December, there were two new daily records in Virginia: over 4,000 new Covid-19 cases and over 2,000 people hospitalized. By comparison, in October, new cases in Virginia averaged below 1,000 cases per day.
38. As of December 25, 2020, the test positivity remains consistently above 10%. By comparison, in October, the statewide test positivity rate was approximately 5% or lower, and in mid-November it was approximately 7%.
39. In November, the Virginia Department of Health, in consultation with the Richmond City Health District, strongly recommended that the House of Delegates conduct the 2021 General Assembly session virtually to the greatest extent possible. See copy of letter dated November 9, 2020, attached as "Exhibit B."

40. U.S. models of Covid-19 agree that social distancing measures and other community mitigation strategies greatly decrease the incidence and mortality of Covid-19.
41. In 2020, the Virginia General Assembly regular session convened on January 8, 2020 and adjourned on March 12, 2020.
42. A reconvened General Assembly session (“Veto Session”) began and ended on April 22, 2020. Because of Covid-19, both chambers of the General Assembly altered their procedures during the Veto Session, with the House of Delegates meeting, socially distanced, under a tent outside the Capitol and the Senate meeting, also socially distanced, in a large conference center at the Science Museum of Virginia.
43. The Pocahontas Building remained closed to the public throughout the Veto Session.
44. A special session (the “2020 Special Session”) of the Virginia General Assembly convened on August 18, 2020, lasted 83 days, and adjourned on November 9, 2020. Again, both chambers of the General Assembly altered their procedures during the 2020 Special Session due to the risks of Covid-19. The Senate again met, socially distanced, in a large conference center at the Science Museum of Virginia, and the House of Delegates handled all meetings, except opening day, virtually rather than in person. For opening day, the House of Delegates met on the floor of the Siegel Center at Virginia Commonwealth University, where the Delegates could adhere to social distancing guidelines.
45. The Pocahontas Building remained closed to the public throughout the entirety of the 2020 Special Session.
46. For the 2021 General Assembly session, the 40-member Senate of Virginia has arranged to again convene in the large conference center space at the Science Museum of Virginia. As in the 2020 Veto Session and Special Session, the public will not be permitted to attend in person.
47. The Science Museum of Virginia is approximately three (3) miles from the Pocahontas Building.
48. The 100-member House of Delegates will be convening for the 2021 General Assembly session by remote means only, including for all of its committee and subcommittee meetings.
49. The 2021 Virginia General Assembly convenes on January 13, 2021 and has an estimated schedule of 30 calendar days.
50. Based on pre-filed bills, some of the issues before the General Assembly for which there may be new proposed laws: redistricting of voting jurisdictions, laws affecting the rights to own, purchase and possess certain firearms, appointment of judges, budget issues, qualified immunity of police and police reform, right to work, inclusion of Virginia into National Popular Vote Interstate Compact, abortion, parole, voter registration and voting issues.

51. In a traditional year, it is not uncommon for a General Assembly session to have more than 1000 bills filed any given year.
52. Plaintiff is not an expert on matters before the General Assembly in 2021. Communication with constituents, lobbyists and subject matter experts as a legislator is important to the Plaintiff as they are experts on subject matter of bills before the 2021 Session for which the Plaintiff will have to vote for or against.
53. Alternative forms of communication between the Plaintiff and constituents exist such as video teleconferencing and telephone communication. The availability of these alternative methods makes General Assembly proceedings more accessible to members of the public who cannot travel to attend in person, but not all constituents have access to the internet or reliable telephone service.
54. The parties agree that the Declaration of Dr. Laurie Forlano constitutes her testimony in this case and is incorporated herein by reference. Dr. Forlano's Declaration shall be admitted into evidence.
55. Exhibits 1-4 of the Plaintiff's identified exhibits are agreed to be admitted into evidence.
56. In normal times, when there is no pandemic, it is common and routine for legislators to have paid and unpaid staff work for them during General Assembly sessions.
57. As to the Senate of Virginia, currently only one paid staff per senator and the senators themselves are allowed in the Pocahontas Building. Unpaid interns are considered "general public" or "not-credentialed" and are not allowed in the building.
58. The hallways in the Pocahontas Building vary in size. Some are as narrow as 4', others are 6', and some are wider.
59. In normal times, there are two entrances for the public to ingress and egress through the Pocahontas Building. There are least 10 elevators. Not all elevators access all parts of the Building. No elevator is more than 6' wide. Stairwells are more than 6' wide.
60. The Capitol Police could, with current resources, ensure that a lower than normal maximum building capacity is not exceeded upon entry. Although most legislators and their staff are not expected to use their Pocahontas Building offices on a regular basis during the 2021 regular session, they are entitled to do so and therefore those numbers, in addition to the number of career civil servants with offices in the Building, must be counted in maximum capacity.
61. The Capitol Police have, in sessions prior to the pandemic, have moved congregating crowds in the Pocahontas Building successfully.
62. The Capitol Police may enforce Executive Order 67 to the extent they observe or otherwise made aware of a violation.
63. The parties agree that the Declaration of Mark J. Vucci constitutes his testimony in this

case and is incorporated herein by reference. Mr. Vucci's Declaration shall be admitted into evidence.

64. The east wing of the Pocahontas Building is comprised of six above-ground floors containing, among other rooms, the offices provided for each delegate and senator, as well as some legislative staff offices. There are committee and conference rooms within the Building, as well as briefing and/or press conference rooms and several lobbies.
65. At least one member of the DLAS Infrastructure Services staff is present in the Pocahontas Building each weekday and each day Session is meeting.
66. Since the Pocahontas Building's closure to the public in March 2020, the Infrastructure Services staff have been reporting to the building on a rotating basis, with one member of the Infrastructure Services staff present in the building each day.
67. Any problem with the physical server supporting the legislative session must be addressed in person. Determining what may have impacted a physical server requires in-person, on-site diagnostics.
68. Capitol Police does not have a process for tracking where every individual within the building is located at all times, how distant any individual is from others within the building, the period of time within which any individual may be standing within 6 to 10 feet of another while in the building, or whether every individual within the building is wearing a mask throughout their visit.
69. In normal (non-pandemic) times, Capitol Police patrol the Building to ensure the safety of those within the building. They do not patrol for capacity.
70. The Pocahontas Building does not have security cameras on every floor.
71. The letter from Suzette Denslow to House members shall be admitted into evidence.
72. The letter from Dr. Oliver, attached to the Declaration of Dr. Forlano, shall be admitted into evidence.
73. Hundreds of bills were filed during the 2020 Special Session restricted to three primary areas during which the Pocahontas Building was closed to the public. Bills considered during the 2020 Special Session during which the Pocahontas Building was closed to the public included such topics as police misconduct, criminal justice reform, racial justice, the COVID-19 pandemic, utility regulation, and the state budget.
74. Senator DeSteph is on the Local Government, Rehabilitation and Social Services, and Transportation Committees, 3 of the 11 standing senate committees.
75. For the 2020 Special Session, the House of Delegates and Senate Committee meetings were all streamed on the internet. These committee meetings will also be streamed for the upcoming 2021 General Assembly session.

76. During a traditional session in the Pocahontas Building, most committee hearings take place in the building itself, where the legislators have their offices. During the 2021 Session, all Senate proceedings—committee hearings and floor sessions—will take place at the Science Museum of Virginia. All House of Delegates proceedings will be virtual.
77. The common spaces, committee rooms, and conference rooms in the Pocahontas Building have been repurposed to allow career staff that need to work in the building to continue to do so in a socially distanced manner.
78. Sen. DeSteph first brought his concern about the issue of the closure of the Pocahontas Building to the attention of the Senate Clerk when he informed her that he was filing this lawsuit.
79. One Virginia senator has been unwilling to wear a mask in the Pocahontas Building.
80. Senator DeSteph has had and continues to have access to the Pocahontas Building.

Jointly Submitted By All Parties:

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